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November 10, 2004


VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***, WC Docket No. 04-313, CC Docket Nos. 04-313, 01-338, 98-184, & 98-141

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on November 9, 2004, Gavin McCarty, Globalcom, Inc., Steve Goodman, Ntelos, Inc., Bruce Bennett, ATX Communications, Inc., Richard Heatter, Mpower Communications Corp., and the undersigned had separate meetings with Christopher Libertelli, Office of Chairman Powell,¹ and Daniel Gonzalez, Office of Commissioner Martin, concerning issues in the above-referenced proceedings.² We presented the views set forth in the attached document which were provided at the meetings.

Sincerely,

Patrick J. Donovan
Philip J. Macres
Joshua M. Bobeck

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¹ Aaron Goldberger, Office of the General Counsel, attended the meeting with Christopher Libertelli.

² Bruce Bennett participated in the meetings via teleconference. Richard Heatter only participated in the meeting with Christopher Libertelli via teleconference (He did not participate in the meeting with Daniel Gonzalez).

Impairment Standard for Loops and Transport

- BOCs' proposed MSA impairment standard would violate *USTA I* and *USTA II*
 - The BOC "competition anywhere equals no impairment everywhere" violates *USTA I*'s granularity requirement
 - BOC high-capacity loop and transport proposals do not adequately assess impairment
 - * BOC's test errs because fiber-based collocators do not necessarily offer DS1 and DS3 loops and transport on a wholesale basis or self-provision facilities at the DS1 or DS3 levels to certain locations or on the transport routes between certain wire centers
 - BOC strategy is to ignore marketplace distinctions between capacity levels
 - More prone to false negatives (erroneous non-impairment findings)
- A capacity, location, and route specific loop and transport impairment analysis is consistent with *USTA I* and *USTA II*
 - Far more granular than the BOC test
 - Capacity based test addresses the potential for deployment of facilities
 - operational and economic barriers that are likely to make entry into a market uneconomic by a reasonably efficient competitor.
 - ALTS three-tiered wire center density test for DS3 and dark fiber transport is another approach that is more accurate than the BOC proposals

DS-1 Loops and Transport

- The Commission may rely on the updated record (state proceedings) to establish a nationwide finding of impairment
- Record evidence generally demonstrates that competitive providers do not self-provision DS1 loops and transport and that these facilities are not available on a wholesale basis from alternative providers

DS1 EELs

- Impairment for DS1 EELs (DS1 loop and DS1 transport combinations) should be based on whether CLECs are impaired without access to the DS1 loop component of the EEL
 - DS1 EELs are solely used to extend a customer's loop
 - The combined facilities are dedicated and provide dial tone to a single customer
 - DS1 transport used in a DS1 EEL does not aggregate transport from other customers
- The Commission should retain the EEL eligibility criteria established in the *TRO* that *USTA II* upheld

DS-3 Loops and Transport

- Establish a nationwide finding of impairment for up to 2 DS3 for loops to a location or up to 12 DS3s on a transport route between wire centers
- Beyond these threshold amounts self-provisioning is feasible
- Below these threshold amounts record evidence reveals that self provisioning is not justified and that these facilities are not available on a wholesale basis from alternative providers.

Entrance Facilities

- Entrance facilities are network elements subject to an impairment analysis.
 - Entrance facilities are loops. The same impairment standard that applies to loops should apply to entrance facilities.
- Interconnection, and interconnection trunks, must be provided at TELRIC

Transition Period

- The lengthy transition for line sharing refutes BOC insistence on shorter transition periods
- New orders are permissible

Mass Market

- Mass market should be limited to residential and home office market.
- SBA 2004 survey found that the smallest businesses on average purchase 1.5-2 business lines and do not purchase DS1 services.
- CLECs should have unbundled access to enterprise customer regardless of the network technology that the RBOC employs (TDM or packet-based network)

Special Access Is Irrelevant to Impairment

- By itself, the possibility of a price squeeze precludes reliance on special access as a substitute for UNEs.
- Current pricing unreasonable and discounts (volume and term) still far above cost-based pricing. Small CLECs do not qualify for volume discounts.
- BOCs' unlawful policies have thwarted use of UNEs.

Verizon and SBC Merger Conditions

- Verizon and SBC are obligated under their merger conditions to offer UNEs even if they challenge the Commission's forthcoming *TRO* Remand decision.